

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JEFFREY T. COLE, P-83297,) No. C 10-2441 CRB (PR)
12 Petitioner,) ORDER REGARDING
13 vs.) REQUEST FOR CERTIFICATE
14 BRENDA CASH, Acting Warden,) OF APPEALABILITY
15 Respondent.)
16

17 This is a habeas case filed pro se by a state prisoner. On August 12, 2011,
18 the Court granted respondent's motion to dismiss on statute of limitations
19 grounds and entered judgment against petitioner. In the order of dismissal the
20 Court also denied a certificate of appealability ("COA") and informed petitioner
21 that although he could not appeal the denial of a COA, he could ask the United
22 States Court of Appeals for the Ninth Circuit to grant one.

23 Petitioner wrote a letter to the court of appeals saying that he wanted that
24 court to consider granting a COA. The letter is stamped "received" by the court
25 of appeals on August 29, 2011, within the time to appeal. The court of appeals
26 forwarded the letter here, apparently thinking that it was a request for a COA *ab*
27 *initio*, rather than for review of the existing ruling. On September 13, 2011, it
28 was docketed here as a request for a COA.

1 .In an effort to protect petitioner's right to appeal, the letter will be treated
2 as a notice of appeal. See Tinsley v. Borg, 895 F.2d 520, 523 (9th Cir. 1990)
3 (treating timely pro se motion for a certificate of probable cause as a timely
4 notice of appeal). The clerk shall proceed as if a notice of appeal had been filed,
5 and send a copy of this order and the letter to the court of appeals.

6 SO ORDERED.

7 DATED: Sept. 16, 2011


CHARLES R. BREYER
United States District Judge

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